IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SCA NO.1290/2003 TO 1292/03, 1436/03, 1445/03, 1633/03 TO 1635/03, 2131/03, 3288/03, 3351/03, 3352/03, 3559/03, 3562/03, 6810/03, 9923/03, 16652/03, 17098/03, 17437/03, 17439/03, 17490/03, 17724/03, 17725/03, 6361/04, 6438/04, 7531/04, 12788/04, 12804/04, 12813/04, 12814/04, 12833/04, 12853/04, 12807/04, 13305/04, 13306/04, 13640/04, 17428/03, 1842/03, 17900/03, 17589/03, and 13642/04 to 13651/04.

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MONMOHJAR LAL ANJANA

Versus

STATE OF GUJARAT

Appearance:

MR N.V. ANJARIA, MR ALPESH RAJPURIYA, MS SONAL D. VYAS, MR KETAN D. SHA for petitioners.

MR AD OZA, GOVERNMENT PLEADER with MS NANDINI JOSHI AGP, for the respondents.

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 25/10/2004

ORAL JUDGEMENT

1.0 Leave to delete respondent no.3 in SCA Nos.13642/04, 13645/04, 13646/04, 13647/04, 13649/04, 13650/04 and 13651/04.

1.1 In all the above petitions a common question of law is involved and therefore they are heard together and disposed of by this common judgement.

2.0 The petitioners in the above petitions are owners of different motor vehicles registered under different authorities under the Motor Vehicles Act, 1988. In these petitions the petitioners have challenged the Notification issued by the Joint Director of Transport, Gujarat, Ahmedabad, dated 9th August 2002 and the consequential actions on the part of the respondent authorities i.e. imposition of fine on the ground of excess load and detention of vehicles.

3.0 The grievance of the petitioners can be summarised as under:

3.1 After purchase of the vehicles in question the petitioners introduce certain modifications and changes under the supervision of experts as permissible under the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) and the Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules). Addition of axle and more wheels would increase the load carrying capacity of the vehicle and the authority under the Motor Vehicles Act is authorised to certify more weight carrying capacity on account of such adaption and modification in the motor vehicles.

3.2 The vehicles of the petitioners were inspected by the Registering Authority who completed all the legal formalities and ultimately issued Certificates of Registration in respect of the vehicles in question. The unladen weight i.e. gross vehicle weight as well as the laden weight i.e. gross carrying capacity are stated in the Certificate of Registration. The laden weight is mentioned after considering the modifications and changes made in the vehicles and not as per the gross carrying capacity assigned by the manufacturer. According to the petitioners, this is permissible under the Act and the Rules. Therefore, the petitioners are entitled to carry load in their respective vehicles as per the laden weight

mentioned in the Certificates of Registration issued by the competent authority.

3.3 The petitioners are engaged in transporting goods throughout India including Gujarat and therefore the vehicles are required to pass through the RTO Checkposts. The grievance of the petitioners is that though the laden weight of the vehicle is less than the certified limits under the Registration Certificate, they are booked for carrying excess weight and heavy penalty is being imposed upon the petitioners for the alleged excess weight.

3.4 The aforesaid action is being taken by the respondent authorities on the basis of Circular dated 9th August 2002 issued by the Joint Director of Transport, Gujarat State, Ahmedabad. The relevant part of Circular dated 9.8.2002 reads as under:

> "It is, therefore, directed not to assign more gross vehicle weight than the gross carrying capacity of this tractor (horse or price mover). If any semi-articulated vehicle or truck-trailer combination is found plying on road carrying goods with gross vehicle weight more than the gross carrying capacity assigned by the manufacturer then the difference thereof should be treated as overloading and compounding fee should be recovered."

3.5 The petitioners have therefore prayed for quashing and setting aside the Circular dated 9th August 2002, to direct the respondents to recognize the gross laden weight of the petitioners' transport vehicles as certified by the Certificates of Registration and to restrain the respondents from initiating any penal action in respect of the concerned vehicles on the basis of carrying goods more than the gross carrying capacity assigned by the manufacturer.

4.0 Thus, the crux of the matter is whether, the respondent authorities are justified in intercepting the vehicles for allegedly carrying excess weight and imposing heavy penalty upon the petitioners on the ground of carrying goods more than the gross carrying capacity assigned by the manufacturer?

5.0 Heard the learned counsel for the respective parties.

6.0 Before proceeding further it would be beneficial to note certain relevant provisions of the Act as under:

6.1 The definitions of "articulated vehicle", "axle weight", "certificate of registration" and "gross vehicle weight" as contained in section 2 of the Act read as under:

(2) "articulated vehicle" means a motor vehicle to which a semi-trailer is attached.

(3) "axle weight" means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests;

(4) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV;

(15) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.

(36) "registered axle weight" means in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle;

(39) "semi-trailer" means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle."

(44) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller.

(48) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body.

(49) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

6.2 Section 39 stipulates necessity for registration which states that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Thus, under the Act, the vehicle is required to be registered with the concerned authority.

6.3 Effectiveness of registration in India is stated in section 46 which reads as under:

"46. Effectiveness in India of registration: Subject to the provisions of section 47, a motor vehicle registered in accordance with this Chapter in any State shall not require to be registered elsewhere in India and a certificate of registration is or in force under this Act in respect of such vehicle shall be effective throughout India.

Thus, once the vehicle is registered in any State, such certificate of registration issued or in force under the Act in respect of such vehicle shall be effective throughout India.

6.4 The procedure of registration is stated in Section 58 which reads as under:

"58. Special provisions in regard to transport vehicles (1) The Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle (other than a motor cab), and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the maximum gross vehicle weight of such vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle, other than a motor cab, shall enter in the record of registration and

shall also enter in the certificate of registration of the vehicle the following particulars, namely -

(a) the unladen weight of the vehicle;

(b) the number, nature and size of tyres attached to each wheel;

(c) the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided,

and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

xxx xxx xxx

(3) There shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels.

Provided that where it appears to the Central Government that heavier weights than those specified in the notification under sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the Central Government may, by order in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

(5) In order that the gross vehicle weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owner of transport

vehicle in accordance with such procedure as may be prescribed to produce the certificate of registration within such time as may be specified by the registering authority.

6.5 Thus, the Registering authority, while registering the vehicle, shall state the unladen weight of the vehicle, the number, nature and size of the tyres attached to each wheel; the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided. It is required to be noted that once the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof are stated in the Certificate, the said Certificate shall be effective throughout India.

6.6 Section 113 imposes certain limitations on weight and use which reads as under:

"113. Limits of weight and limitations on use:

(1) The State Government may prescribe the conditions for the issue of permits for transport vehicles by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumataic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer -

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that

the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

6.7 Thus, it is clear that no person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer, the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle and the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration. In short, no person shall be allowed to drive the vehicle if the laden weight or unladen weight exceeds the weight specified in the certificate of registration.

6.8 Section 114 empowers the authority to have the vehicle weighed, which reads as under:

"114. Power to have vehicle weighed: (1) Any officer of the Motor Vehicles Department authorized in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometers from any point on the forward route or within a distance of twenty kilometers from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorized under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issue that permit."

6.9 The power to restrict the use of vehicle is specified in section 115 of the Act:

"115. Power to restrict the use of vehicles The State Government or any authority authorized in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.

6.10 The provision regarding punishment in respect driving vehicle exceeding permissible weight is stated in section 194 which reads as under:

"194. Driving vehicle exceeding permissible weight: (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

(2) Any driver of a vehicle who refused to stop and submit his vehicle to weighing after being directed to do so by an officer authorized in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

6.11 The provision regarding power to levy fee is stated in section 211 which reads as under:

"211. Power to levy fee - Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorization, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.

6.12 The provision regarding publication, commencement and laying of rules and notifications is stated in section 212 which reads as under:

"212. Publication, commencement and laying of rules and notifications

(1) The power to make rules under this act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.

(3) Even rule made by any State Government shall be laid, as soon as may be after it is made before the State Legislature.

(4) Every rule made by the Central Government under this Act, every scheme made by the Central Government under sub-section (1) of section 75 and sub-section (1) of section 163 and every notification issued by the Central Government under sub-section (4) of section 41, sub-section (1) of section 58, sub-section (1) of section 59, the

proviso to sub-section (1) of section 112, subsection (4) of section 163A and sub-section (4) of section 213 shall be laid, as soon as may be after it is made, before each House of Parliament while it is in section for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the section immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, scheme or notification or both Houses agree that the rule or scheme should not be made or the notification should not be issued, the rule, scheme or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, scheme or notification.

6.13 Section 213 stipulates the appointment of motor vehicles officers and their powers and duties. The said section reads as under:

"213. Appointment of motor vehicles officers (1) The State Government may, for the purpose of carrying into effect the provisions of the Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860 (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this

Act) to be exercised by them, and the conditions governing the exercise of such powers.

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such.

(5) In addition to the powers that may be conferred on any officer of the Motor Vehicles Department under sub-section (3), such officer as may be empowered by the State Government in this behalf shall also have the power to:-

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made thereunder are being observed:

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept;

Provided that:-

(i) any such search without a warrant shall be made only by an officer of the rank of a gazetted officer;

(ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;

(iii) where the search is made without a warrant, the gazetted officer concerned shall record in writing the grounds for not obtaining a warrant and report to his immediate superior that such search has been made;

(c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out

the purposes of this Act;

(d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which which he has reason to believe has been committed;

(e) launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any Court;

(f) exercise such other powers as may be prescribed;

Provided that no such person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be apply to any search or seizure under this section as they apply to any search or seizure under the authority of any warrant issued under section 94 of the Code."

7.0 Thus, the aforesaid provisions would show that Section 39 stipulates that the vehicle should be registered with the concerned registering authority. Section 46 states that if a certificate of registration is issued the same shall be effective through India. Section 58 lays down the requirement of details to be stated in the certification of registration. Section 113 stipulates that no person shall drive a motor vehicle or trailer, the unladen weight of which exceeds the unladen or laden weight specified in the certificate of registration. Section 114 stipulates the manner in which the vehicle is to be weighed. Section 115 stipulates the power to restrict the use of vehicle. Section 194 lays down the provisions for imposing punishment for driving the vehicle exceeding permissible weight. Section 211 stipulates the power to levy fee. Section 213 of the Act lays down the appointment of motor vehicles officers and the powers conferred upon them.

8.0 In the context of the above, I am required to consider the contentions of the respective parties.

8.1 Learned counsel for the petitioners submitted

that in view of the statutory provisions, the petitioners were issued certificate of registration by the competent authority in accordance with the provisions of Chapter IV of the Act. He submitted that unless the said certificates are cancelled under the Act by the competent authority, as per section 46 of the Act, such certificates of registration issued or in force under the Act in respect of the vehicles in question shall be effective throughout India and the concerned State authorities are required to accept the same.

8.2 Learned counsel for the petitioners submitted that if an authority of the State is allowed to initiate proceedings on the premise that the registration is done contrary to Chapter IV, then it will amount to cancelling the certificate of registration by an officer without any adjudication which is not permissible under the law.

8.3 Learned counsel for the petitioners submitted that the concerned authority is required to follow the procedure for declaring or initiating any procedure for cancellation of the certificate. No such procedure has been followed in the present case and merely on assumption and presumption no punishment can be imposed upon the petitioners when the petitioners are holding valid certificates of registration.

8.4 Learned counsel for the petitioners submitted that every certificate duly registered and issued under the Statute has a presumptory value and has force in law unless the same is cancelled by the competent authority under the Act after following the requisite procedure. In the present case, no such procedure has been initiated and even though the certificate of registration is in force, the respondent authorities are initiating action against the petitioners which is against the provisions of the Act. Therefore, the respondent authorities have no power or authority to initiate action against the petitioners when the petitioners are holding a valid certificate of registration.

8.5 Learned counsel for the petitioners submitted that the Circular dated 9th August 2002 is contrary to the Central Government Circular dated 18th October 1996 which has been modified subsequently on 26.4.2000. He submitted that the said Circular is contrary to the provisions of the Act and therefore requires to be quashed and set aside.

8.6 Learned counsel for the petitioners submitted that the Registration Certificate certifies the

registered laden weight of the transport vehicle to carry the weight within the prescribed limit of the registered laden weight certified by the R.T.O. authority under the Certificate of Registration. He submitted that this registered laden weight registered under the Certificate of Registration is binding to all the authorities constituted under the Motor Vehicles Act and the Motor Vehicles Rules and therefore the authorities cannot ignore the registered laden weight granted by the RTO and no penalty can be imposed on the petitioners.

8.7 Learned counsel for the petitioners further submitted that in exercise of powers conferred under the Motor Vehicles Act, the Government of India has issued Notification dated 18.10.96 and also Circular dated 3.2.1998 incorporating the policy decision for grant of laden weight in respect of transport vehicles on the basis of total number of axles and tyres. The learned counsel submitted that the Registering Authority grants registration certificate and authorises the laden weight in consonance with the Motor Vehicles Act, Motor Vehicles Rules and Circlers and Notifications issued by the Government of India in exercise of the statutory powers. Therefore, it is contended that such Registration Certificate cannot be ignored by the authorities and they cannot initiate penal proceedings or impose penalty though the goods being carried in the vehicles are within the prescribed limit of laden weight.

8.8 On behalf of some of the petitioners it was contended that the RTO Authority has not only assigned the approved GVW of 35200, 44000 & 44200 and 49000 KGS to their respective vehicles, but in fact the RTO Authorities also levy and recover the vehicle tax on the basis of GVW of the approved GVW of 35200, 44000 & 44200 and 49000 KGS as mentioned in their respective RC Books. Therefore the respondents cannot adopt double standard in respect of the petitioners' vehicles. The said treatment is in violation of Articles 14 and 19 of the Constitution of India.

8.9 Learned counsel for the petitioners submitted that the Hon'ble Supreme Court has in the case of Andhra Pradesh Vs. B. Noorulla Khan and Anr. reported in JT 2004(5) SC 195 categorically held that: " ... Only the rules framed by the Central Government would be applicable to all India tourist permit and not the rules framed by the State Government". Thus in the instant case the impugned order which is not even a Rule framed by the State of Gujarat and which is merely a Circular cannot override the express provisions of law laid down

by the Central Government. The Certificate of Registration issued under the Central Legislature & Rules cannot be ignored by the State under the pretext of following its own Circular which is misconceived in law and facts.

8.10 Learned counsel for the petitioners pointed out various definitions such as sections 2(4) which defines Certificate of Registration, section 2(15) which defines Gross Vehicle Weight, section 2(36) which defines "Registered axle weight, section (39) which defines semi-trailer, section 2(44) which defines tractor, section 2(48) which defines unladen weight and section 2(49) which defines weight and contended that the said various definitions go a long way to show that the impugned action is bad in the eye of law and it deserves to be quashed and set aside.

8.11 The petitioners lastly contended that the petitioners are holding National Permit and the same also reflects the GVW entered into the RC book of the vehicle. The various States including State of Gujarat has charged the tax on the basis of the approved GVW as it is entered in the RC Book of the respective vehicles. Hence on the one hand the permit is granted reflecting the GVW as mentioned in the RC Book and on the other hand the respondents have started ignoring the same which is arbitrary and illegal. The petitioners further submitted that the mandate of Articles 14 and 21 is very clear on the point. The State of Gujarat has no authority or power to change or ignore the Certificate of Registration issued by their Counter Parts in other States and therefore the action of the respondents is illegal and arbitrary.

9.0 Mr. A.D. Oza, learned Government Pleader for the respondent authorities submitted that the respondents have filed reply in some of the petitions and the same may be treated as reply to all the petitions.He submitted that if the registration itself is bad in law or if it is in violation of the provisions of section 58 of the Act, the concerned officer is empowered under sections 113, 114 and read with section 213 to act in view of the fact that the vehicles are travelling throughout the State.

9.1 Mr. A.D. Oza, learned Government Pleader appearing for the respondents submitted that as per the notification dated 18.10.1996 issued by the Government of India, Ministry of Surface Transport under Section 58 of the Motor Vehicles Act, 1988 prescribes the weight for different makes of vehicles, as per the approval granted

to the manufacturer. Mr. Oza submitted that before any vehicle is registered by the Registering Authority under the Act, the authority is required to consider the axle weight of the vehicles, which form the articulated vehicle or the gross vehicles weight of the articulated vehicles which is approved under the Notification dated 18.10.1996. According to him before any vehicle is registered by the Registering Authority under the Motor Vehicles Act, the Registering authority is required to consider the axle weight of the vehicles, which form the articulated vehicle or the gross vehicles weight of the articulated vehicle, which is approved and prescribed under the aforesaid notification.

9.2 Mr. Oza submitted that according to the design of the axle, the Gross Vehicle Weight capacity is mentioned for particular horse, as per Gross Vehicle Weight capacity, the semi-trailer is selected to suit the horse. The reason for the same is that the load carrying capacity of the trailer should match with the pulling capacity of the tractor. If the load is beyond the carrying capacity of the tractor, then the vehicle instead of moving in the forward motion would be lifted in upward direction, which will make the steering wheel absolutely free, which would ultimately lead to the driver losing the control and command of the vehicle. This could be hazardous and lead to a great threat to the other vehicles plying on the road.

9.3 Mr. Oza submitted that as per the Notification of Government of India under section 58(1) of the Motor Vehicles Act dated 18.10.1996 as amended on 26.4.2000, certain specified maximum permissible gross vehicle weight (GVW) and maximum safe axle weight for different make and model of transport vehicles are prescribed. However, certain Registering Authorities are not assigning the gross vehicle weight to the same articulated vehicles in accordance with the said notifications.

9.4 Mr. Oza submitted that as per the notification the maximum safe axle weight, the gross vehicle weight in case of some articulated vehicle and the maximum safe axle weight of each axle of transport vehicle is provided. The relevant provision of the said notification reads as under:

"The maximum gross vehicle weight and the maximum safe axle weight of each axle shall be:

(i) vehicle manufacturers rating of the gross

vehicle weight and axle weight respectively for each make and model as duly certified by the testing agencies as per the provisions of Rule 126 of the Central Motor Vehicles rules, 1989 (hereinafter referred to as the Rules") or

(ii) the maximum gross vehicle weight and the maximum safe axle weight of each vehicle respectively as specified in the Schedule with the said notification for the relevant category, or

(iii) the maximum load permitted be carried by the tyres as specified in the Rule 95 of the Rules for the size and number of the tyres fitted on the axle of the relevant make and model, whichever is less."

9.5 Mr. Oza, therefore, submitted that according to the Notification dated 18.10.1996, the maximum gross vehicle weight and the maximum safe axle weight of each of such axles of such vehicle shall be the lowest amongst the above mentioned three weights and practically it is also observed that always the lowest weight remains as recommended by the manufacturers' rating.

9.6 Mr. Oza submitted that the over-loaded vehicles not only cause more wear and tear on the road, but also cause more vehicular pollution because of the incapacity of the engine of the vehicle to pull more than the prescribed weight and it is a threat to public safety. Overloaded vehicles are also prone to losing the braking efficiency of the vehicle causing accident on the road. He, therefore, submitted that the respondent authorities are justified in imposing restrictions on the overloaded vehicles.

10.0 Learned counsel for the petitioners relied upon a decision of the Supreme Court in the case of N. Venkateswara Rao Vs. S.T.A., reported in (1997)2 SCC 320 (=1997(1) SCALE 176 = 1997(5) Supreme 585 = 1997(1) CLT (51) (S.C.)), it is held as under:

"It is true that clause (1) by itself indicates and gives an impression that the Central Government has abdicated its discretion in favor of the manufacturer, of rating the gross vehicle weight and the axle weight respectively. But it must be understood in the light of the

explanatory note added by the Government which indicates that due to rapid technological change in the manufacture of the automobile vehicles by the industry, several new models are being added regularly; it is practically difficult for the Government to specify on day-to-day basis the maximum vehicle weight or the maximum axle weight which would cause delay in implementation thereof. Therefore, the Government, having regard to the changing manufacturing pattern and changing situation, have decided that the manufacturer specifies the maximum gross vehicle weight and the axle weight. It necessarily requires to be decided by the testing agencies specified in Rule 126 and they should act in conformity with the provisions of the Act and the Rules and should certify accordingly. When they so do, it in effect amounts to a direction by the Central Government to the authorities to comply with the provisions of the Act. Thereby, before registration of the vehicle, after the construction of the motor vehicle with equipment as mentioned in the Act the Registering Authority shall e required to verify whether it is in conformity with the provisions of the Act, Rules and the notification. Once that is done, the question of discrimination or arbitrariness on the part of the Registering Authority does not arise. Rule 126-A of the Rules came into force with effect from 30.12.1993. Therefore, any vehicle registered prior to the said date should conform with the specifications mentioned in item (ii) of the notification read with the Schedule attached to Rule 95 of the Rules. Subsequent thereto, they all required to comply with the law as enumerated hereinbefore.

" There is also no substance in the contention relating to the expression "whichever is less" used in the notification.Each manufacturer is required to conform to the provisions of the Act, Rules and the specifications mentioned by the Government in that behalf.The manufacturers send them for testing to the appropriate authority specified in Rule 126 of the Rules. When so tested what is specified in the Rules is the maximum; but it does not mean that it should be in excess of it. It may be less.The Rules indicate the minimum of weightage. In an appropriate case the maximum safe axle weight and the maximum vehicle weight should always be

conformable; though in respect of tyres fitted into the vehicles, the weight is variable. It should always be less than the maximum of the safe axle weight mentioned in the certificate of registration. The words "whichever is less' required to be understood in that sense. Note II of Rule 95 should be understood in this perspective. The maximum safe axle weight would always be the criteria and the maximum vehicle weight should normally be in conformity with the safe axle weight so that the roadworthiness of the vehicle, the safety of the vehicle and also the safety of the carriage of the goods would always remain without creating any traffic hazards. The driver would carry the goods without any hiatus in the carriage of the goods."

10.1 Learned counsel for the petitioners has also relied upon a decision of the Supreme Court in the case of State of Andhra Pradesh and others Vs. B. Noorulla Khan and Anr, reported in AIR 2004 SC 2413 (=2004 AIR SCW 2901 = 2004(6) SCC 194 = JT 2004(5) SC 195). In the said decision the Supreme Court held as under:

"It is the Central government alone which has been authorised to frame the rules as well as to prescribe the conditions for the purposes of all-India tourist permit which is exclusively vested in the Central government. The power to frame rules and prescribe conditions for the all-India tourist permit is exclusively vested in the Central Government and the High C ourt was right in holding that the State Government would have no jurisdiction to either frame the rules or prescribe conditions for the all-India tourist permits. Such permits would be exclusively governed by the rules framed by the Central government or the conditions prescribed by the Central government. The judgement of the High Court in so far as it has held that it is the rules framed by the Central Government only which would be applicable to all-India tourist permits and not the rules framed by the State Government is upheld."

11.0 After going through the provisions of the Act and the Rules, I am of the opinion that the contention of the petitioners that when the certificate of registration is in force throughout India, no punishment or levy can be imposed upon the petitioners. Once the certificate of registration is issued by the competent authority, under

section 46 of the Act, such certificate of registration in respect of such vehicle shall be effective throughout India. In the context of the submission of the petitioners, it is necessary to note the provisions regarding cancellation of registration. Sections 54 and 55 deal with cancellation of registration which read as under:

"54. Cancellation of registration suspended under section 53: Where the suspension of registration of a vehicle under section 53 has continued without interruption for a period of not less than six months, the registering authority within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel the registration.

55. Cancellation of registration. - (1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to the authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the State Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or

its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of India, the registering authority shall cancel the registration.

(5) If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), and for reasons to be recorded in writing, cancel the registration.

(6) A registering authority canceling the registration of a motor vehicle under section 54 or under this section shall communicate such fact in writing to the owner of the vehicle, and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(8) The expression original registering authority in this section and in sections 41, 49, 50, 52, 53 and 54 means the registering authority in whose records the registration of the vehicle is recorded.

(9) In this section certificate of

registration includes a certificate of registration renewed under the provisions of this Act.

11.1 A bare reading of subsection (5) of section 55 of the Act would make it clear that if a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make and for reasons to be recorded in writing, cancel the registration. It is also stipulated that a registered post acknowledgment due notice is required to be sent to the owner of the vehicle at his address entered in the certificate of registration. Therefore, it is to be presumed that unless and until such procedure is followed and the certificate of registration is cancelled, such certificate of registration shall be effective throughout India and no authority can take action on the basis of the entries made in such certificate.

11.2 As far as the present case is concerned, the allegation is that the vehicles are carrying goods more than the gross carrying capacity assigned by the manufacturer. It is not the case of the respondents that the vehicles are carrying goods more than the gross carrying capacity mentioned in the certificate of registration. I am, therefore, of the opinion that once the competent authority under the Act has certified the gross carrying capacity in the certificates, the owners of the vehicles are entitled to carry such weights and the respondents will be justified only when the vehicles are carrying more weights than the gross carrying capacity mentioned in the certificate of registration. Such certificates are being issued by the competent authority after following the procedure and after satisfying the weight carrying capacity of the vehicle. Therefore, if there is any discrepancy in the contents of the certificate of registration, as per section 55 of the Act, the registering authority is authorized to cancel the certificate of registration after following the procedure i.e. after issuing a notice and after giving the owner an opportunity to make such representation as he may wish to make. Admittedly no such procedure is followed in the present case and therefore, I am of the clear opinion that the respondents cannot detain the vehicles of the petitioners or impose punishment or fine on the basis that the vehicles are carrying goods more than the gross carrying capacity assigned by the

manufacturer or by the Circular of the State Government.

11.3 As stated above, there is a clear procedure for cancellation of the certificate of registration in case there is any discrepancy in such certificate. Apart from that a statutory appeal is provided against such cancellation under the Act. If the authorities are taking action against the vehicle owners on the basis of carrying goods more than the gross carrying capacity assigned by the manufacturer, even though the weight of the goods is in consonance with the gross carrying capacity mentioned in the certificate of registration, they are exercising beyond the power granted to them. Such punitive action also takes away the right of hearing of the petitioners as also the right of appeal or revision.

11.4 In my view, the Motor Vehicle Officers under section 213 of the Act cannot take any penal action against the petitioners if the vehicles of the petitioners are carrying goods in consonance with the gross carrying capacity mentioned in the certificate of registration. While a competent authority has registered the vehicle under the Act and is collecting tax for all India permit, such issue cannot be adjudicated by an officer of the State.

11.5 In my opinion, under the shelter of the aforesaid Circular dated 9th August 2002, an officer cannot be allowed to presume against the correctness of the certificate and to initiate action against a vehicle owner. Such actions are contrary to the provisions of the law and therefore the contention in this behalf raised on behalf of the petitioners is required to be accepted. If at all any discrepancy is found in the Certificate, it is open for the respondents to initiate proceedings for cancellation of the certificate of registration under the provisions of the Act.

11.6 As regards the contention that the Circular dated 9th August 2002 is against the provisions of the Act and the Circulers issued by the Central Government, the same is required to be considered in view of the provisions stated hereinabove. By the said Circular it is directed not to assign more gross vehicle weight than the gross carrying capacity of the tractor (horse or price mover) mentioned in the said Circular. It is further directed that if any semi-articulated vehicle or truck-trailer combination is found plying on road carrying goods with gross vehicle weight more than the gross carrying capacity assigned by the manufacturer then the difference

thereof should be treated as overloading and compounding fee should be recovered. The justification for issuance of such direction as mentioned in the said Circular is as under:

> "It is noticed that some of the registering authorities do not assign the gross vehicle weight to the tractor-trailer as per the Government of India, Ministry of Surface Transport Notification dated 18.10.1996 as amended by Notification dated 26.5.2 This is because some dealers in the sale certificates do not correctly show the gross vehicle weight of such vehicle taking into consideration the maximum Possible Gross carrying Weight of the tractor coupled with suitable trailer."

11.7 The maximum Permissible Gross Carrying Weight of some of the tractors according to the manufacturers' rating is given in the table mentioned in the said Circular. However, maximum permissible gross carrying weight given in the said table is entirely different from the specifications mentioned in the Circulers issued by the Central Government. The State Government has merely stated the names of the vehicles unlike in the Circular of the Central Government. Therefore the first direction not to assign more gross vehicle weight than the gross carrying capacity of the said tractor is contrary to instructions contained in the Circulers issued by the Central Government. This Circular can be considered by the Registering authority in Gujarat while registering a vehicle in Gujarat, but they cannot question the registration made in other States on the basis of the said Circular.

11.8 In the above context it is relevant to note a decision of the Supreme Court in the case of Godawat Pan Masala Products I.P. Ltd. and others Vs. Union of India and others reported in 2004 AIR SCW 4483 (= 2004(7) SCC 68 = JT 2004 (6) SC 179) wherein it is held as under:

> "68. There is yet another reason why we are inclined to take the view that Section 7(iv) deals with a situation of emergency with respect to the local area. A decision for banning an article of food or an article containing any ingredient of food injurious to health can only arise as a result of broadly considered policy. If such a power be conceded in favour of a local authority like the Food (Health) Authority, paradoxical results would arise. The same

article could be considered injurious to public health in one local area, but not so in another. In our view, the construction of the provision of the statute must not be such as to result in such absurd or paradoxical consequences. Hence, for this reason also, we are of the view that the power of the State (Health) Authority is a limited power to be exercised locally for temporary duration."

Further, in para 77.5 the Supreme Court held as under:

"5. The State Food (Health) Authority has no power to prohibit the manufacture for sale, storage, sale or distribution of any article, whether used as an article or adjunct thereto or not used as food. Such a power can only arise as a result of wider policy decision and emanate from parliamentary legislation or, at least, by exercise of the powers by the Central Government by framing rules under Section 23 of the Act."

11.9 It is, therefore, clear that the State Government would not be justified in issuing directions contrary to the directions issued by the Central Government.

11.10 The next part of the direction contained in the aforesaid Circular dated 9th August 2002 directs recovery of compounding fee. In the Act or Circular issued by the Central Government there is no such provision for levying such fee which gives blanket powers to Transport Officers to levy fine from the vehicle owners. As discussed hereinabove, if the gross vehicle weight is as mentioned in the registration certificate, no officer is empowered to intercept the vehicle and impose punishment and fine for allegedly carrying goods more than the gross carrying capacity assigned by the manufacturer. In such event the Act prescribes certain procedure which is required to be followed. The circular issued by the State Government cannot have an overriding effect upon the provisions of the Act. In short, the direction issued by the Government in Circular dated 9th August 2002 has an overriding effect on the provisions of the Act by giving naked powers to the Transport Officers, which cannot stand in the eyes of law. Thus, the said Circular travels beyond the scope of the Act and therefore the said Circular is required to be quashed.

11.11 In the context of the prayer for quashing the penalty and collection of fine, it is required to be

noted that the authority has compounded the offence under section 200 of the Act and collected the fine. Since the offence has been compounded and the concerned vehicle was discharged, it would not be proper for this court to interfere with the same under Article 226 of the Constitution of India, especially when the parties have accepted their alleged guilt. It may be that the concerned driver or representative of the vehicle must have accepted the guilt in pursuance of his business decision. In view of plea of guilty by the driver or representative of the petitioner at the relevant time, and in view of subsection (2) of Section 200 of the Act that no further proceedings were taken against the driver or the representative of the vehicle in respect of such offence, I do not find any merit in the prayer made by the petitioners. Therefore, the prayers made in these petitions with regard to quashing the imposition of penalty and collection of fine by the concerned authority cannot be accepted.

11.12 Mr. Oza had contended that subsection (4) of section 58 was omitted by Act No.27 of 2000. The said subsection (4) was as under:

> (4) When by reason of any alteration in such vehicle, including an alteration in the number, nature of size of its tyres, the gross vehicle weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of sub-section (3), the provisions of section 52 shall apply and the registering authority shall enter in the certificate of registration of the vehicle revised registered weights which accord with the said sub-section."

11.13 In view of the above, he submitted that revision of weights on account of change in the tyres and alteration of the vehicle is not permissible and the weights mentioned in the registration certificate on the basis of such alteration is not permissible. However, even if the argument of Mr. Oza is accepted, then also the only course open for the respondents is to initiate proceedings for cancellation of such registration certificates as provided under the Act and by issuing a Circular that the Government cannot levy fine on the owners of the vehicle. As stated above, such act is against the provisions of the Act and cannot be sustained. Apart from that, the Circular dated 18.10.1996, which permits modification in the vehicles, was issued by the Central Government under sub-section (3) of section 58 of the Act and therefore the same is

binding to State Government.

11.14 As regards the contention with respect to increase of power of trailer beyond the capacity of the machine is not permissible. In the present case there is no modification in the machines and therefore the same does not require any consideration.

11.15 I do not find any substance in the contention raised by Mr. Oza that overloaded vehicles not only cause more wear and tear on the road, but also cause more vehicular pollution and such vehicles are prone to accident. In my opinion, this aspect is to be considered at the time of issuance of registration certificate. While issuing the certificate the concerned authority under the Act is required to look into all these aspects and if he is satisfied, then only such registration certificate can be issued. Once a competent authority has issued a valid registration certificate, and if the vehicle is carrying gross weight in accordance with the certificate, then it is not open for the respondent to raise such contentions.

12.0 Moreover, in Special Civil Application No.11643/04 and allied matters, wherein the very same issue is involved, by judgement and order dated 14th October 2004, this Court has partly allowed the petitions and quashed and set aside the Circular dated 9th August 2002.

13.0 For the foregoing reasons, the petitions are partly allowed. The Circular dated 9th August 2002 is quashed and set aside. It is declared that if the vehicles are carrying the gross laden weight as per the certificate of registration, the respondent shall not take any penal action in respect of such vehicles. However, as stated hereinabove, the prayer regarding refund of the penalty or fine already paid is not granted. It is clarified that if the certificate of registration is not issued in accordance with the provisions of the Act, it will be open for the respondents to take appropriate action after following the proper procedure as contemplated under the Act. Rule is made absolute to the aforesaid extent with no order as to costs.

[KALPESH JHAVERI, J.]

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